



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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POSTF-110339-02

MEMORANDUM FOR AREA COUNSEL (HEAVY MANUFACTURING &
TRANSPORTATION)
LARGE & MID-SIZE BUSINESS DIVISION
CC:LM:HMT:NEW:2
Attn: Leslie Spiegel

FROM: John J. McGreevy, Assistant to the Branch Chief, Branch 1
Administrative Provisions and Judicial Practice
CC:PA:APJP:B01

SUBJECT: Overpayment Interest

This Chief Counsel Advice responds to your memorandum dated April 19, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND:

Taxpayer =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

g. =

h. =

i. =

j. =

k. =

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ISSUE:

Where the Service offsets an overpayment for Year 2 against an underpayment for Year 3, whether the taxpayer is entitled to overpayment interest under I.R.C. § 6611 from the return due date of the underpayment against which the overpayment is credited, to the later date that the underpayment actually arose and the offset was effective.

CONCLUSION:

Where the Service offsets an overpayment for Year 2 against an underpayment for Year 3, the corporate taxpayer is entitled to overpayment interest under I.R.C. § 6611 from March 15, Year 3, the date the overpayment arose, to March 15, Year 4, the due date of the Year 3 return to which the overpayment was applied.

FACTS:

The taxpayer filed a return for Year 3 on September 15, Year 4. It reported an overpayment of \$g and elected to credit the overpayment to Year 4. The \$g credit elect was not needed to satisfy any estimated tax payments for Year 4 because they were paid in full with other funds.

The taxpayer was audited for Year 2 and Year 3. An audit deficiency was determined for Year 3 of \$h. An audit overpayment was determined for Year 2 of \$i. This audit overpayment was applied to Year 1 in the amount of \$j and to Year 3 in the amount of \$k. The Service computed interest on the Year 2 audit overpayment applied to Year 3 from March 15, Year 3 to March 15, Year 4.

LAW AND ANALYSIS:

I.R.C. § 6611(b)(1) provides that interest shall be allowed and paid “[i]n the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken”. The “due date” is defined in Treas. Reg. § 301.6611-1(h)(2) as “the last day fixed by law or regulation for the payment of the tax (determined without regard to any extension of time).” I.R.C. § 6151(a) provides that the date prescribed for payment is the date fixed for filing the return (determined without regard to any extension of time to file). For corporate calendar Year taxpayers, under I.R.C. § 6072(b), the date prescribed for filing is March 15th following the close of the calendar Year.

Applying these provisions, where the Service offsets an overpayment for Year 2 against an underpayment for Year 3, the corporate taxpayer is entitled to overpayment interest under I.R.C. § 6611 from March 15, Year 3, the date the overpayment arose, to March

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15, Year 4, the due date of the Year 3 return to which the overpayment was applied. See *Marsh & McLennan Companies, Inc. v. United States*, 50 Fed. Cl. 140 (2001).

The taxpayer contends that *Avon Products, Inc. v. United States*, 588 F.2d 342 (2d Cir. 1978), and *Sequa Corp. v. United States*, 99-1 USTC ¶ 50,379 (S.D.N.Y. 1998) support its position. These cases, however, interpret I.R.C. § 6601, which requires taxpayers to pay interest if any amount of internal revenue tax “is not paid on or before the last date prescribed for payment.” Unlike *Avon Products* and *Sequa Corp.*, the issue here involves the calculation of overpayment interest under I.R.C. § 6611, not deficiency interest under I.R.C. § 6601. Both the courts in *Marsh & McLennan* and *Avon Products* recognized the distinction between I.R.C. §§ 6601 and 6611.

There has been no change in the National Office position on this issue and the *Marsh & McLennan* case further supports this position.

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Please call our office at (202) 622-4910 if you have any further questions.